IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

W.P. NOS.13964, 19066, 19069, 19088, 25349 OF 2001 AND 7571 OF 2002

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WRIT PETITION NO : 13964 of 2001

Between:

M/s. Kotari Products Limited, Kanpur, rep. by its Authorised Signatory, Mr. K.T.Mahi.

..... PETITIONER

AND

1 State of Andhra Pradesh,rep.by its Secretary to Government

Legislative Affairs & Justice, Law Department, Secretariat,
Government of AP, Hyderabad.
2 State of Andhra Pradesh, rep. by its Principal Secretary. Revenue

Department, Government of Andhra Pradesh,
Secretariat, Hyderabad.
3 The Commercial Tax Officer, Ashoknagar Circle, Hyderabad.
4 The Commissioner of Commercial Taxes, Andhra Pradesh,

Nampally, Hyderabad.
5 The Union of India, rep. by its Secretary, Finance Department

Government of India, New Delhi.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to

issue a Writ of Mandamus or any other appropriate Writ or Order or direction declaring the Andhra Pradesh Tax on Luxuries Act, 1987 as amended by Andhra Pradesh Ordinance 2 of 2001 as illegal and unconstitutional in so far as it seeks to levy of tax on gutka and accordingly strike it down and interdict the Respondents from levying and collecting luxury tax on gutka from the Petitioner or in the alternative direct the Union of India to enforce the provisions of proviso to para 4 of Second Schedule to the ADE Act, 1957 by directing the 5th Respondent not to release any share to State of Andhra Pradesh out of the collections under the ADE Act, 1957.

Counsel for the Petitioner: MR.P.SRINIVASA REDDY

Counsel for the Respondent Nos.1 to 4: SPL GP FOR TAXES

Counsel for Respondent No.5: MR.D.Ranga Rao Naidu, Additional standing counsel

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WRIT PETITION NO : 19066 of 2001

Between:

M/s. Dwarakamai Associates, Rep. Partner-P.Radhakrishna,
10/276A, Railway Station Road,
Gunthakal.

..... PETITIONER

AND

1 State of Andhra Pradesh, Rep. Secretary to Government,
Legislative Affairs & Justice, Law Department,
Secretariat, Hyderabad.
2 State of Andhra Pradesh, Rep. Principal Secretary,
Revenue Department, Government of Andhra Pradesh,
Secretariat, Hyderabad.
3 The Commercial Tax Officer,
Guntakal Circle, Anantapur.
4 The Commissioner of Commercial Taxes, Andhra Pradesh,
Nampally, Hyderabad.
5 The Union of India, Rep. Secretary,
Finance Department, Government of India,
New Delhi.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to

issue a Writ of Mandamus or any other appropriate Writ or order or direction declaring the Andhra Pradesh Tax on Luxuries Act, 1987 as amended by A.P.Act 40/2001 as illegal and unconstitutional in so far as it seeks to levy of tax on gutka and accordingly strike it down and interdict the Respondents from levying and collecting luxury tax on gutka from the Petitioner or in the alternative direct the Union of India to enforce the provisions of proviso to Para 4 of the 2nd schedule to the ADE Act. 1957 by directing the 5th Respondent not to release any share of State of Andhra Pradesh out of the collections under the ADE Act. 1957 and pass such other order or orders as the Honourable Court my deem fit and proper in the circumstances of the case in the interest of justice.

(prayer amended as per court order dated 22.8.2002)

Counsel for the Petitioner: MR.P.SRINIVASA REDDY

Counsel for the Respondent Nos.1 to 4: GP FOR LAW & LEGISLATIVE AFFAIRS

Counsel for Respondent No.5: MR.D.Ranga Rao Naidu, Additional standing counsel

WRIT PETITION NO : 19069 of 2001

Between:

M/s. Excel Agencies, Rep. Partner-C.Md.Manan,
7/243, SJP High School Road,
Guntakal.

..... PETITIONER

AND

1 State of Andhra Pradesh, Rep. Secretary to Government,
Legislative Affairs & Justice, Law Department,
Secretariat, Hyderabad.
2 State of Andhra Pradesh, Rep. Principal Secretary,
Revenue Department, Government of Andhra Pradesh,
Secretariat, Hyderabad.
3 The Commercial Tax Officer,
Guntakal Circle, Anantapur.
4 The Commissioner of Commercial Taxes, Andhra Pradesh,
Nampally, Hyderabad.
5 The Union of India, Rep. Secretary,
Finance Department, Government of India,
New Delhi.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ or order or direction declaring the A.P. Tax on Luxuries Act, 1987 as amended by A.P.Act 40/2001 as illegal and unconstitutional in so far as it seeks to levy of tax on gutka and accordingly strike it down and interdict the Respondents from levying and collecting luxury tax on gutka from the Petitioner or in the alternative direct the Union of India to enforce the provisions of proviso to Para 4 of the 2nd schedule to the ADE Act. 1957 by directing the 5th respondent not to release any share of State of A.P. out of the collections under the ADE Act. 1957 and direct the 3rd respondent to refund a sum of Rs. 17,000/ being luxury tax paid for the month of June, 2001 and pass such other order or orders as the Honourable Court my deem fit and proper in the circumstances of the case in the interest of justice.

(the learned counsel has amended the prayer as per Court Order dt. 22-8-2002 in WPMP 19248/02.)

Counsel for the Petitioner: MR.P.SRINIVASA REDDY

Counsel for the Respondent Nos.1 to 4: GP FOR LAW & LEGISLATIVE AFFAIRS

Counsel for Respondent No.5: MR.D.Ranga Rao Naidu, Additional standing counsel

WRIT PETITION NO : 19088 of 2001

Between:

M/s. Srinivasa Agencies, Rep. by its Proprietor-P.Chandra Sekhar,
9/242, T.B.Road,
Guntakal.

..... PETITIONER

AND

1 State of Andhra Pradesh, Rep. by its Secretary to Government, Legislative Affairs & Justice, Law Department, Secretariat, Government of Andhra Pradesh, Hyderabad.
2 State of Andhra Pradesh, Rep. by its Principal Secretary, Revenue Department, Government of Andhra Pradesh, Secretariat, Hyderabad.
3 The Commercial Tax Officer, Guntakal Circle, Anantapur.
4 The Commissioner of Commercial Taxes, Andhra Pradesh, Nampally, Hyderbad.

5 The Union of India, Rep. by its Secretary,
Finance Department, Government of India,
New Delhi.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ or order or direction declaring the Andhra Pradesh Tax on Luxuries Act, 1987 as amended by A.P.Act 40/2001 as illegal and unconstitutional in so far as it seeks to levy of tax on gutka and accordingly strike it down and interdict the Respondents from levying and collecting luxury tax on gutka from the Petitioner or in the alternative direct the Union of India to enforce the provisions of proviso to Para 4 of the 2nd schedule to the ADE Act. 1957 by directing the 5th Respondent not to release any share of State of Andhra Pradesh out of the collections under the ADE Act. 1957 and direct the 3rd respondent to refund a sum of Rs.13,84,096/ being luxury tax paid/adjusted for the month of June, July and August, 2001 and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case in the interest of justice.

(prayer amended as per court order dated 22.8.2002 in WPMP 19247/2002)

Counsel for the Petitioner: MR.P.SRINIVASA REDDY

Counsel for the Respondent Nos 1 to 4.: GP FOR LAW & LEGISLATIVE AFFAIRS

Counsel for the Respondent No.5: MR.D.Ranga Rao Naidu, Additional standing counsel

WRIT PETITION NO : 25349 of 2001

Between:

M/s. Tated Agencies, Rep. by Proprietor, Mr. Mahender Kumar,
3-4-148/16 (Old 1620), II Floor, Tobacco Bazar,
Secunderabad-03

..... PETITIONER

AND

1 The State of A.P., Rep. by Secretary to Government,
Legislative Affairs & Justice, Law Department, Secretariat, Govt. of

A.P., Hyderabad
2 The State of A.P., Rep. by Principal Secretary,
Revenue Department, Govt. of A.P., Secretariat,
Hyderabad
3 The Commercial Tax Officer,
Mahankali Street, Secunderabad.
4 The Commissioner of Commercial Taxes,

A.P., Nampally, Hyderabad.

5 The Union of India, Rep. by Secretary,
Finance Department, Govt. of India,
New Delhi.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus or any other appropriate writ or order or direction declaring the Andhra Pradesh Tax on luxuries Act, 1987 as amended by Andhra Pradesh Act 40 of 2001 as illegal and unconstitutional in so far as it seeks to levy of tax on luxury IPCO Creamy snuff sold by the petitioner and accordingly strike it down and interdict the Respondents from levying and collecting tax on IPCO Creamy Snuff from the petitioner or in the alternative direct the union of India to enforce the provisions of Proviso to para 4 of the Second Schedule to the ADE Act, 1957 by directing the 5th respondent not to release any share to State of Andhra Pradesh out of the collections under the ADE Act, 1957 and pass such other or orders as this Hon'ble Court may deem fit and proper in the circumstance of the case.

(prayer amended as per court order dated 22.8.2002 in WPMP 19247/2002)

Counsel for the Petitioner: MR.P.SRINIVASA REDDY

Counsel for the Respondent Nos.1 to 4: SPL GP FOR TAXES

Counsel for the Respondent No.5: MR.D.Ranga Rao Naidu, Additional standing counsel

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WRIT PETITION NO : 7571 of 2002

Between:

M/s Sai Agencies, Rep by its Proprietrix, Mrs.P.V.E.S.V.Lakshmi,
Vizianagaram.

..... PETITIONER

AND

1 The State of Andhra Pradesh, Rep. by its Secretary to Government,
Legislative Affairs & Justice Law Department, Secretariat,
Government of Andhra Pradesh, Hyderabad.

2 The State of Andhra Pradesh, Rep. by its Principal Secretary,
Revenue Department, Government of Andhra Pradesh
Secretariat, Hyderabad.

3 The Commercial Tax Officer, M.G.Road (West),
Vizianagaram.

4 The Commissioner of Commercial Taxes, Andhra Pradesh,
Nampally, Hyderabad.
5 The Union of India, Rep. by its Secretary,
Finance Department, Government of India,
New Delhi.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ or Order or direction declaring the Andhra Pradesh Tax on Luxuries Act, 1987 as amended by Andhra Pradesh Tax on Luxuries (Amendment) Act 40 of 2001 as illegal and unconstitutional in so far as it seeks to levy of tax on gutka and khaini and accordingly strike it down and interdict the Respondents from levying and collecting Luxury Tax on gutka and khaini from the Petitioner or in the alternative direct the Union of India to enforce the proviso to Para 4 of Second Schedule to the ADE Act, 1957 by directing the 5th Respondent not to release any share to State of Andhra Pradesh out of the Collections under the ADE Act, 1975 and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.A.SARVESWAR RAO

Counsel for the Respondent Nos.1 to 4: SPL GP FOR TAXES

Counsel for the Respondent No.5: MR.D.Ranga Rao Naidu, Additional standing counsel

The court at the stage of admission made the following

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COMMON ORDER: (per Sri BRSR,J)

It is stated by the learned counsel for the petitioners as well as by the learned special Government Pleader appearing for the department that the subject matter that arises for consideration in these writ petitions is squarely covered by an authoritative pronouncement of the Supreme Court in GODFREY PHILLIPS INDIA LIMITED Vs. STATE OF U.P.. Following the said decision, these writ petitions are allowed in the same terms.

The learned Special Government Pleader appearing for the department has however drawn our attention to paras 97 and 98 of the judgment, which are to the

following effect.

“It was stated on behalf of the State Government that after obtaining interim orders from this Court against recovery of luxury tax, the appellants continued to charge such tax from consumers/customers. It is alleged that they did not pay such tax to respective State Governments. It was, therefore, submitted that if the appellants are allowed to retain the amounts collected by them towards luxury tax from consumers, it would amount to “unjust enrichment” by them.

In our opinion, the submission is well-founded and deserves to be upheld. If the appellants have collected any amount towards luxury tax from consumers/customers after obtaining interim orders from this Court, they will pay the said amounts to the respective State Governments.”

It is needless to observe that the above said observations made by the Supreme Court will equally be applicable to the cases on hand.

(B.SUDERSHAN REDDY,J)

dated 13..04..2005

(C.V.RAMULU,J)

msv

That Rule nisi has been made absolute as above. Witness the Hon’ble Sri BILAL NAZKI, the Acting Chief Justice on this Wednesday, the thirteenth day of April, , Two Thousand and Five.

To

1 The Secretary to Government,

Legislative Affairs & Justice, Law Department, Secretariat,
Government of AP, Hyderabad.
2 The Principal Secretary,

Revenue Department, Government of Andhra Pradesh,
Secretariat, Hyderabad.
3 The Commercial Tax Officer, Ashoknagar Circle, Hyderabad.
4 The Commissioner of Commercial Taxes, Andhra Pradesh,

Nampally, Hyderabad.
5 The Secretary,

Finance Department

Government of India, New Delhi.

6 2 CCs to GP for Law and Legislative Affairs, High Court of A.P.

Hyderabad (OUT)

7 2 CCs to Special G.P. for Taxes, High Court of A.P. Hyderabad

(OUT)

8 2 CD copies.

9 The Commercial Tax officer, Guntakal circle, Ananthapur.

10. The Commercial Tax officer, Mahankali Street, Secunderabad

11 The Commercial Tax officer, M.G.Road (west) Vizianagaram